

Appl. No. 10/669,221
Atty. Docket No. 2003B101
Amdmt. dated July 20, 2006
Reply to Office Action of April 20, 2006

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REMARKS/ARGUMENTS

This reply is in response to the Office Action dated April 20, 2006. Claims 1-18 are pending in the application and stand rejected. Entry of the foregoing amendment and reconsideration of the claims is respectfully requested.

Claims 1-2, 6-9, and 16-17 stand provisionally rejected under 35 U.S.C. § 101 as claiming the same invention as that of claims 1-2, 6-9, 16, and 21, respectively, of co-pending Application No. 10/803,318. Considering this rejection is provisional, Applicants will defer an appropriate response until any claims are deemed to be allowed.

Claims 3-5, 10-15, and 18 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 3-5, 10-15, and 22 of co-pending Application No. 10/803,318. Considering this rejection is provisional, Applicants will defer an appropriate response until any claims are deemed to be allowed.

Claims 1-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Eichbauer (U.S. Patent No. 5,998,017) hereafter "Eichbauer." The Examiner states that "Eichbauer teaches a coextruded, oriented multilayer stretch wrap film comprising a basic three layer A/B/A structure wherein the outer A layers comprise a blend comprising a metallocene-catalyzed polyethylene... and a core layer of polyethylene... including LDPE." The Examiner then admits that Eichbauer does not recite HDPE as required in the claims; yet, the Examiner rejects the claims anyway.

Applicants respectfully traverse the rejection on grounds that the Examiner has not established a *prima facie* case of obviousness. To establish *prima facie* obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. See MPEP § 2143.03 citing In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). At the very least, Eichbauer does not teach, show or suggest a core layer comprising a blend comprising an HDPE and an LDPE, as admitted by the Examiner. The terms "LDPE" and "HDPE" are very well known in the literature and the art. For convenience, the widely recognized densities of the different polymers are shown in the Applicants' specification at paragraph [0007]. Each has very different crystallinity and branching; hence, the densities are completely different and do not overlap. As mentioned above, Eichbauer does not teach, show or suggest a core layer comprising

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a blend comprising an HDPE and an LDPE, as recited in every claim. For at least this reason, withdrawal of the rejection and allowance of the claims is respectfully requested.

Despite the fact that Eichbauer does not teach, show, or suggest a blend comprising an HDPE and an LDPE, the Examiner states that "it would have been obvious to one having ordinary skill in the art to include 'HDPE' in any of the layers... utilizing routine experimentation to determine the optimum amount of different polyethylene resins and densities to utilize based on the desired mechanical properties for a particular end use." Applicants disagree.

The Examiner's assertion is nothing more than impermissible hindsight reconstruction of the claimed invention based on the Applicant's own specification. Nowhere does Eichbauer teach, show or suggest a blend comprising an HDPE and an LDPE, much less a core layer comprising a blend comprising an HDPE and an LDPE, as required in every claim. Eichbauer goes into great detail of each layer 10, 20, 30 of its multilayer film. Eichbauer discloses numerous blends of various polymers for each layer 10, 20, 30, but never a blend comprising HDPE and LDPE. The middle layer 20 is discussed at great length at column 6. Specifically, Eichbauer discloses a high pressure low density polyethylene having a density between 0.90 to 0.935 g/cc. Eichbauer at col. 6, ll. 11-15. Eichbauer also discloses polypropylene, isotactic polypropylene and ethylene-propylene copolymers. *Id.* at col. 6, ll. 20-27. However, Eichbauer does not teach, show or suggest a core layer comprising a blend comprising an HDPE and an LDPE, as required in every claim. Therefore, withdrawal of the rejection and allowance of the claims is respectfully requested.

At best, in view of these disclosures, one skilled in the art might find it obvious to try various combinations of known polymers as suggested by the Examiner. However, this is not the standard of 35 U.S.C. § 103. *In re Geiger*, 2 USPQ2d 1276 (Fed. Cir. 1987) citing *In re Goodwin*, 576 F.2d 375, 377, 198 USPQ 1, 3 (CCPA 1978); *In re Antonie*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977); *In re Tomlinson*, 363 F.2d 928, 150 USPQ 623 (CCPA 1966). To establish *prima facie* obviousness of a claimed invention, the Examiner must *particularly* identify the suggestion, teaching or motivation from *within* the reference itself to provide the motivation or suggestion to modify a reference. M.P.E.P. § 2143. As discussed above, Eichbauer does not teach, show or suggest a core layer comprising a blend comprising an HDPE and an LDPE, as required in every

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claim. Therefore, the Examiner has not established *prima facie* obviousness. Withdrawal of the rejection and allowance of the claims is respectfully requested.

Furthermore, the Examiner asserts that "it is well known in the art that HDPE may be utilized in place of lower density polyethylene materials." Applicants disagree and respectfully request the Examiner to provide evidence from the prior art to support such a conclusion. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the Examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the reference." Ex parte Clapp, 227 USPQ 972, 973 (B.P.A.I. 1985); MPEP § 2142. Here, the Examiner has simply proposed an unsupported legal conclusion that various polymers are interchangeable for all applications. Unsupported legal conclusions and impermissible hindsight may not provide a proper basis to support a rejection based on *prima facie* obviousness. Therefore, the Examiner erred in rejecting the claims under 35. U.S.C. §103(a). Accordingly, withdrawal of the rejection and allowance of the claims is respectfully requested.

Going further, the Examiner concludes that "the incorporation of tie layers between a core layer and skin layers or the incorporation of intermediate regrind or reprocessed layers [sic] is conventional in the art and would have been obvious to one having ordinary skill in the art at the time of the invention." Applicants respectfully disagree and request clarification. Applicants are unclear why such a discussion of tie layers between core layers and skin layers and intermediate regrind or reprocessed layers is relevant to the claimed invention. Clarification is respectfully requested.

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CONCLUSION

Having addressed all issues set out in the office action, Applicants respectfully submit that the pending claims are now in condition for allowance. Applicants invite the Examiner to telephone the undersigned attorney if there are any issues outstanding which have not been addressed to the Examiner's satisfaction.

Respectfully submitted,

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Amy Carr-Trexler
Amy Carr-Trexler
Attorney for the Applicants
Attorney Registration No. 51,531

Post Office Address (to which correspondence is to be sent):
ExxonMobil Chemical Company
Law Technology
P.O. Box 2149
Baytown, Texas 77522-2149
Telephone No. (281) 834-5519
Facsimile No. (281) 834-2495